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March 20, 2007

## **FILED ELECTRONICALLY AND ORIGINAL VIA HAND-DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk  
South Carolina Public Service Commission  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

RE: Application of Wyboo Plantation Utilities, Inc. for Approval of New  
Schedule of Rates and Charges for Water and Sewer Services  
**Docket No. 2005-13-WS, ELS File No. 1015-10306**


Dear Mr. Terreni:

Enclosed for filing please find the original and one copy (1) copy of the **Petition for Reconsideration** filed by Wyboo Plantation Utilities, Inc. in the above-referenced docket. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please stamp "received" the additional copy of this letter, and via the bearer of this document.

With kind regards, I am

Yours truly,

  
John F. Beach

JB/cr

Attachment

cc: all parties of record, w/a  
Mr. Mark Wrigley, w/a

**THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.**

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2005-13-W/S**

IN RE:	)	
	)	
Application of Wyboo Plantation	)	
Utilities, Inc. for adjustment of rates and	)	<b>PETITION FOR RECONSIDERATION</b>
charges for the provision of water and	)	
sewer service	)	

Wyboo Plantation Utilities, Inc. ("WPU"), pursuant to S.C. Code Ann., §§58-5-330 and 1-23-10, et seq. (as amended) and the applicable rules and regulations of the South Carolina Public Service Commission (the "Commission"), requests that the Commission reconsider certain other matters addressed in Order No. 2007-138 (the "Order"), issued on February 26, 2006 in the above-referenced docket. WPU received that order on February 28, 2007. In support of its petition, WPU states as follows:

**INTRODUCTION**

South Carolina's Legislature has defined public interest as follows:

"public interest" means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the state's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

*S.C. Code Ann.*, § 58-4-10 (B)

The Commission's decision in this proceeding must address WPU's rate application in a way that serves *all* aspects of the definition of public interest.

A privately owned public utility cannot survive if it is forced to operate at a financial loss. A privately owned public utility cannot survive if it is forced to invest over \$120,000 in a rate proceeding, and then denied any material rate relief. A privately owned public utility cannot survive if it is forced to maintain hundreds of STEP systems within its service area, but then denied the ability to recover the reasonable costs it expends in doing so. One absolute truth in this rate proceeding is that if the Commission does not reconsider its current decision denying WPU a rate increase, WPU will not survive.

The Legislature has made the financial integrity of Wyboo one of the express considerations in this proceeding. Any decision by the Commission that addresses the public interest must therefore authorize WPU to increase its rates so that it is no longer operating at the present financial loss.

One clear option that the Commission has, and an option that was discussed in the hearing, is to allow WPU to increase its rates *after* WPU has established that it has addressed all of ORS's service concerns. Such a ruling would simultaneously protect WPU's customers by ensuring that WPU's future quality of service meets all Commission requirements, while also protecting the public interest by maintaining the financial integrity of the Utility. WPU agrees that such a ruling by the Commission would be appropriate.

### **DISCUSSION**

Without waiving any of its rights to further contest the Order, WPU asserts that the Order is in violation of constitutional or statutory provisions, is in excess of the statutory authority of

the Commission, is made upon unlawful procedure, is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, is arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion, or is otherwise in violation of S.C. Code Ann., §1-23-380(g).

A. **The Commission erred in making the following specific findings and conclusions.**

1. **“There is insufficient evidence in this record to support the Company’s request for a rate increase.” Order, p. 10**

ORS witnesses Seale and Morgan placed ORS’s audit into evidence, which, as revised, established every element necessary to grant WPU a rate increase except for three:

1) Salary Expenses (and associated employment tax expenses); 2) Office Supplies and Expenses; 3) Rental Expense (Office and Equipment). Mark Wrigley’s own testimony directly established both the existence and prudence of as-adjusted expenses in each of these three categories. WPU will further address each of these items below.

2. **“WPU failed to provide adequate justification for and the prudence of the alleged salary increases to Wrigley’s claimed employees.” Order, p. 11.**

Wrigley testified in great detail to the contractual arrangement between WPU and its employees related to salary. Further, Wrigley placed into evidence supporting hearing exhibits 15 and 16. These exhibits contained actual WPU corporate records demonstrating the salary payments and corresponding increasing payable balance of WPU’s contractual salary arrangement.

As importantly, **WPU’s testimony is the *only evidence in the Record* on this point.** There is absolutely no evidence offered by any party that contradicts Mr. Wrigley’s testimony in

this regard. WPU's testimony supports as-adjusted salary expenses of \$232,123.20.

Significantly, ORS' official rate proceeding audit concluded that test year salary should be \$179,858. ORS revised its testimony to adjust Salary and Wages expense down to \$0.00 only pending the Commission's findings on the prudence of these affiliated transactions.

Significantly, ORS did not testify that it felt WPU's \$232,123.20 salary amount was imprudent.

ORS witnesses did testify that WPU must have employees, and, therefore, must have *some* salary expense in order to survive. The Record is void of any evidence that would allow the Commission to adopt a number less than \$179,858 in any event, and certainly void of evidence supporting the Commission's current finding that WPU is entitled to \$0.00.

3. **"The Record is far from clear as to what salaries WPU actually paid within test year." Order, p. 12**

This Commission conclusion is, again, directly contradicted by the Record evidence in this proceeding. WPU's 2005 Federal Income Tax Return indicated that WPU paid \$50,488 in salary during the test year 2005. It is hard to imagine how there could be any more credible evidence than a Federal Income Tax Return, which is filed with the Internal Revenue Service under penalty of perjury. Placing a higher standard upon WPU than this graphically demonstrates the arbitrary and capricious nature of the Commission's entire ruling in this proceeding.

4. **"The rent required by the lease between WPU and its owner, Wrigley, was not proven to be justified or prudent." Order, p. 12**

5. **"Wrigley had proven no payment under the rental agreement during the audit, and this Commission finds that no credible evidence of such was presented." Order, p. 12**

6. **"There is no evidence in the record to indicate that this rental rate is reasonable as**

**determined by comparable rental properties in the same area of Sumter, South Carolina.” Order, p. 13**

The Commission’s findings on all of these points are directly disproven by the testimony and record evidence in this proceeding. Mark Wrigley provided uncontroverted testimony and documentary evidence establishing the existence of WPU’s \$24,000 per year rental commitment to Wrigley for rental of WPU’s headquarters. Mr. Wrigley provided uncontroverted testimony establishing the reasonableness of his selected location in Sumter, explaining that it was an equal distance between WPU’s customer bases located in Wyboo Plantation, Granada and Cedar Hills. Mr. Wrigley introduced Hearing Exhibit 15, which contained official company records demonstrating that Wyboo had satisfied its \$2,000 per month rental obligation by paying \$1,000.18 per month, plus \$999.82 added to a running account payable.

With regard to the reasonableness of the rental rate, Wrigley testified - again without contravention - that he had surveyed the market for appropriate rental properties for WPU’s headquarters and selected 19 Broad Street because it was the most appropriate for Wyboo’s needs. Mr. Wrigley testified on the details of alternative properties in the Sumter area, including property descriptions, their price, and their suitability to WPU. He testified that those properties would have cost WPU *more than* \$2,000 per month, but would have provided WPU with less floor space than WPU needed to operate.

As with salaries, *WPU’s testimony and evidence in this regard was completely uncontraverted*. There is absolutely no evidence in this Record suggesting that WPU was paying Wrigley above the going market rate for similarly - appropriate rental property. There is also no evidence bringing WPU’s and Wrigley’s contractual arrangements into question. Regardless of whether the Commission accepted Wyboo’s and Mr. Wrigley’s contractual arrangement on rent as commercially reasonable, Mr. Wrigley presented completely

uncontroverted evidence that WPU was paying Wrigley at least \$1,000.18 in actual cash per month.

Finally, with regard to the Commissions' emphasis on the \$500 penalty for delinquent payment, Mr. Wrigley testified that it was completely within the landlord's discretion to apply this delinquent payment charge, that he waived all delinquent penalties, and would continue to do so into the future. WPU's official books and records in evidence completely support Wrigley in this regard, and no party offered any testimony to the contrary.

In summary, the Commission's decision to deny WPU a single penny of expense for any of the affiliated transactions is completely unsupported by the Record evidence in this proceeding. Moreover, it is necessarily based upon the astonishing and totally unsupportable conclusion that WPU has *absolutely no expenses* for salary and rental – a conclusion that was directly contradicted not only by all documentary evidence in the record, but also by ORS witnesses on cross-examination.

7. **“The record is replete with evidence of poor quality of service to WPU's customers.”**  
**Order, p. 13**

WPU's customers very methodically provided testimony regarding customer service issues. However, when examined more closely, that testimony does not support a Commission decision to lower the rate relief to which WPU is entitled. First, it should be remembered that the customer's testimony is self-serving, as it supports their concerted efforts to deny Wyboo a rate increase. Moreover, while the testimony includes a number of stories regarding Mr. Wrigley's demeanor, it does not include legitimate testimony showing that WPU failed in its obligation to deliver adequate water and sewer treatment to its customers. On the whole, WPU's service record, including its record with the South Carolina Department of Health and

Environmental Control, is average to above-average, when compared to other South Carolina water and sewer utilities. The level of this service certainly does not justify a complete denial of WPU's request for rate relief.

The more substantive point that was made in this proceeding is that a public utility must have sufficient financial resources if it is to provide superior service. The Commission's decision to deny WPU adequate rates is actually the most certain way to ensure WPU will not have the resources in the future to provide superior customer service. If the Commission fails to provide WPU with the rate relief it desperately needs, such a ruling would work directly against the Legislature's definition of "public interest."

**B. The Commission should reverse its decision to deny WPU's request to pass on the cost of repairing customer septic tank effluent pump (STEP) systems to WPU's customers.**

One of WPU's regulatory obligations as a sewer utility is to maintain STEP systems located on customer properties within WPU. WPU's current rates, which were set by the Commission in 1998, clearly do not reimburse WPU for any costs associated with STEP system maintenance. While the testimony showed that the actual nature of WPU's obligation in this regard has been somewhat unclear, WPU has now agreed to undertake this obligation. Along with that regulatory obligation goes a corresponding regulatory right for WPU to recover its operating costs associated with this maintenance through some type of appropriate rate structure. WPU's has proposed that it pass its costs of maintenance, without markup, on to the customer whose STEP system requires maintenance.

The Commission has approved this rate treatment since at least August 1, 1990, when it approved the following for Carolina Water Service, Inc.:

Solids Interceptor Tanks

For all customers receiving sewage collection service through an approved



solids interceptor tank, the following additional charges shall apply:

- a. Pumping charge – At such time as the Utility determines through its inspection that excessive solids have accumulated in the interceptor tank, the Utility will arrange for pumping the tank and will include \$150 as a separate item in the regular billing to the customer.
- b. Pump repair or replacement charge – If a separate pump is required to transport the customer's sewage from solids interceptor tank to the Utility's sewage collection system, the Utility will arrange to have this pump repaired or replaced as required and will include the cost of such repair or replacement and may be paid for over a one-year period.
- c. Visual inspection port – In order for a customer who uses a solids interceptor tank to receive sewage service from the Utility, or continue to receive such service, the customer shall install at the customer's expense a visual inspection port which will allow for observation of the contents of the solids interceptor tank and extraction of test samples therefrom. Failure to provide such a visual inspection port after timely notice of not less than 30 days shall be just cause for interruption of service until a visual inspection port has been installed.<sup>1</sup>

Docket No. 89-610-W/W, Order No. 90-694, Appendix A, p. 5.

In spite of WPU's testimony that these provisions were crucially important to its financial stability, the Commission failed to substantively address this issue in its Order. This tariff provision has appeared in every Schedule of Rates and Charges this Commission has approved for Carolina Water Service and its other related companies for the last seventeen years. It would be highly discriminatory for the Commission to deny WPU the ability to utilize this same rate treatment for STEP system maintenance, particularly in light the Commission's decision to completely deny other rate relief to WPU in this proceeding. It is noteworthy that Witness Morgan of the Office of Regulatory Staff actually supported WPU's request for the \$155.00 pump-out fee.

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<sup>1</sup> WPU proposed this same concept through slightly different language in its initial direct testimony and application, but ultimately testified that it would agree to the above-referenced language, if approved by the Commission.

C. **The Commission should rectify its failure to address WPU's request for the official inclusion of Mill Creek in WPU's geographic service area.**


Mr. Wrigley purchased the stock of WPU in 2001. At that time, Wrigley testified that the previous owners of WPU informed him that all properties WPU was then serving, which included water service to Wyboo's Mill Creek neighborhood, were included in WPU's geographic service area. WPU has been operating pursuant to this assumption since Mill Creek came on line around 1999. All of WPU's customers within Mill Creek were treated exactly the same as all other WPU customers in this rate proceeding. The Office of Regulatory Staff directly supported WPU's proposal for the Commission to include Mill Creek in WPU's geographic service area. Notably, no other party objected to WPU's request. WPU respectfully requests that the Commission reconsider this portion of its order and add a finding that officially includes the Mill Creek Subdivision in WPU's official service area.


**CONCLUSION**

For the reasons set forth herein, and in order to ensure the survival of WPU, WPU requests that the Commission reconsider its decision and grant WPU the appropriate and necessary rate relief appropriate. WPU agrees that it would be appropriate for the Commission to allow WPU to increase its rates only after WPU has established that it has satisfactorily rectified the seventeen service concerns set forth on pages 14-18 of the Commission's Order. Such a ruling would simultaneously protect WPU's customers, by ensuring that WPU's future quality of service meets all Commission requirements, while also protecting the public interest, by maintaining the financial integrity of WPU.

WHEREFORE, having fully set forth its grounds for this petition, WPU respectfully requests that the Commission reconsider Order No. 2007-138, as set forth herein, and grant such other relief as the Commission deems just and proper.

Respectfully submitted,

 03.15.2007  
Mr. Mark S. Wrigley  
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Counsel for  
Wyboo Plantation Utilities, Inc.

March 15, 2007

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2005-13-W/S**

IN RE:

Application of Wyboo Plantation  
Utilities, Inc. for adjustment of rates and  
charges for the provision of water and  
sewer service

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of the **Petition for Reconsideration** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

**VIA HAND-DELIVERY**

Jocelyn G. Boyd, Esquire  
Hearing Officer

**South Carolina Public Service Commission**

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March 20, 2007  
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